

Cook Mowery Law Group
Clayton Cook-Mowery #41110
11900 NE 1st Street, Suite 300
Bellevue WA 98005
T: (425) 478.6673

THE HONORABLE JUDGE KAREN A. OVERSTREET

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

In Re:

JAYNA COLE

Debtor,

JAYNA COLE

Plaintiff.

VS

SPRINGLEAF FINANCIAL SERVICES

Defendant

**ADVERSARY COMPLAINT
SEEKING LIEN AVOIDANCE
OF WHOLLY UNSECURED
LIEN**

CASE NO. 14-18396

Adversary No.:

ADVERSARY COMPLAINT SEEKING

LIEN AVOIDANCE OF WHOLLY UNSECURED LIEN

NOW COMES, The Plaintiff, Jayna Cole, by and through her attorney Clayton Cook-Mowery, and for the purpose of this complaint alleges the following:

1. This adversary proceeding arises out of Plaintiff's Chapter 13 case now pending before this Court. This Court has jurisdiction to consider the matters herein pursuant to 28 U.S.C. §§ 157 and 1334 and 11 U.S.C. § 506 and 1322. This is a core proceeding under 28 U.S.C. §§ 157(b)(2)(A), (B), (K), and (O).

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1 2. Plaintiff is a natural persons living in Snoqualmie, King County, Washington.

2 3. Defendant Springleaf Financial Services (hereinafter "Springleaf") is a company licensed to do

3 business in Washington.

4 5. Plaintiff is the owner of a parcel of real estate located in Arlington, Snohomish County,

6 Washington commonly described as 10709 124th St NE, Arlington WA 98223.

7 6. Prior to the filing of this bankruptcy case, Plaintiff allegedly executed a second lien in favor of

8 Springleaf, evidencing a loan and recorded in the Snohomish County, Washington real estate

9 records.

10 7. On the date of filing of Plaintiff's Chapter 13 Petition, November 18, 2014 Plaintiff was

11 allegedly indebted to Springleaf, or successors and/or assigns under such instrument in the

12 approximate sum of \$\$5,288.65 for the second lien. See Claim 3-1.

13 8. On the date of filing of Plaintiff's Chapter 13 Petition, the value of Plaintiffs' real property

14 described above was \$132,300. See Schedule A. On that date, the debt owing to the senior

15 lienholder was approximately \$168,043.29. See Schedule D. Total senior liens to Defendant's

16 totaled at least \$168,043.29.

17 9. No equity in Plaintiff's real property exists to which Defendant's lien can attach. Therefore,

18 pursuant 11 U.S.C. §§ 506 and 1322, and in re Zimmer, 313 F.3d 1220 (9th Cir. 2002), Plaintiff is

19 entitled to "strip off" the lien held by Defendant so that such lien becomes voided and no longer

20 remains a lien against Plaintiff's real property.

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23

24 **PRAYER FOR RELIEF**

25

26 WHEREFORE, Plaintiff prays for a judgment and order voiding the Defendant's deed of trust,

27 adjudging that the note is no longer secured by the deed of trust against the above-described real

28 property unless this Chapter 13 case is later dismissed prior to discharge, and for such other and

further relief as this Court might deem just and equitable.

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**ADVERSARY COMPLAINT SEEKING
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WHOLLY UNSECURED LIEN - 2 of 3

1 Respectfully submitted this 23rd day of March, 2015.
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5 /s/ Clayton Cook-Mowery

6 Clayton Cook-Mowery, WSBA #41110
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8 Attorney for Plaintiff/Debtor
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